

paragraph (c) of this section. This notice is a “pleading” for purposes of § 2570.61(m) of this chapter.

(2) Except as provided in paragraph (h) of this section, a notice issued pursuant to paragraph (g)(1) of this section, indicating the Department’s intention to assess a penalty, shall become a final order, within the meaning of § 2570.61(g) of this chapter, forty-five (45) days from the date of service of the notice.

(h) *Administrative hearing.* A notice issued pursuant to paragraph (g) of this section will not become a final order, within the meaning of § 2570.61(g) of this chapter, if, within thirty (30) days from the date of the service of the notice, the administrator or a representative thereof files a request for a hearing under §§ 2570.60 through 2570.71 of this chapter, and files an answer to the notice. The request for hearing and answer must be filed in accordance with § 2570.62 of this chapter and § 18.4 of this title. The answer opposing the proposed sanction shall be in writing, and supported by reference to specific circumstances or facts surrounding the notice of determination issued pursuant to paragraph (g) of this section.

(i) *Service of notices and filing of statements.* (1) Service of a notice for purposes of paragraphs (c) and (g) of this section shall be made:

- (i) By delivering a copy to the administrator or representative thereof;
- (ii) By leaving a copy at the principal office, place of business, or residence of the administrator or representative thereof; or
- (iii) By mailing a copy to the last known address of the administrator or representative thereof.

(2) If service is accomplished by certified mail, service is complete upon mailing. If service is by regular mail, service is complete upon receipt by the addressee. When service of a notice under paragraph (c) or (g) of this section is by certified mail, five (5) days shall be added to the time allowed by these rules for the filing of a statement, or a request for hearing and answer, as applicable.

(3) For purposes of this section, a statement of reasonable cause shall be considered filed:

(i) Upon mailing, if accomplished using United States Postal Service certified mail or Express Mail;

(ii) Upon receipt by the delivery service, if accomplished using a “designated private delivery service” within the meaning of 26 U.S.C. 7502(f);

(iii) Upon transmittal, if transmitted in a manner specified in the notice of intent to assess a penalty as a method of transmittal to be accorded such special treatment; or

(iv) In the case of any other method of filing, upon receipt by the Department at the address provided in the notice of intent to assess a penalty.

(j) *Liability.* (1) If more than one person is responsible as administrator for the failure to file the annual report, all such persons shall be jointly and severally liable with respect to such failure.

(2) Any person against whom a civil penalty has been assessed under section 502(c)(2) pursuant to a final order, within the meaning of § 2570.61(g), shall be personally liable for the payment of such penalty.

(k) *Cross-reference.* See §§ 2570.60 through 2570.71 of this chapter for procedural rules relating to administrative hearings under section 502(c)(2) of the Act.

[54 FR 26894, June 26, 1989, as amended by 67 FR 777, Jan. 7, 2002; 68 FR 3734, Jan. 24, 2003]

§ 2560.502c-4 Civil penalties under section 502(c)(4).

(a) *In general.* (1) Pursuant to the authority granted the Secretary under section 502(c)(4) of the Employee Retirement Income Security Act of 1974, as amended (the Act), the administrator (within the meaning of section 3(16)(A) of the Act) shall be liable for civil penalties assessed by the Secretary under section 502(c)(4) of the Act, for failure or refusal to furnish:

- (i) Notice of funding-based limits in accordance with section 101(j) of the Act;
- (ii) Actuarial, financial or funding information in accordance with section 101(k) of the Act;
- (iii) Notice of potential withdrawal liability in accordance with section 101(l) of the Act; or

(iv) Notice of rights and obligations under an automatic contribution arrangement in accordance with section 514(e)(3) of the Act.

(2) For purposes of this section, a failure or refusal to furnish the items referred to in paragraph (a)(1) above shall mean a failure or refusal to furnish, in whole or in part, the items required under section 101(j), (k), or (l), or section 514(e)(3) of the Act at the relevant times and manners prescribed in such sections.

(b) *Amount assessed.* (1) The amount assessed under section 502(c)(4) of the Act for each separate violation shall be determined by the Department of Labor, taking into consideration the degree or willfulness of the failure or refusal to furnish the items referred to in paragraph (a) of this section. However, the amount assessed for each violation under section 502(c)(4) of the Act shall not exceed \$1,000 a day (or such other maximum amount as may be established by regulation pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended), computed from the date of the administrator's failure or refusal to furnish the items referred to in paragraph (a) of this section.

(2) For purposes of calculating the amount to be assessed under this section, a failure or refusal to furnish the item with respect to any person entitled to receive such item, shall be treated as a separate violation under section 101(j), (k), or (l), or section 514(e)(3) of the Act, as applicable.

(c) *Notice of intent to assess a penalty.* Prior to the assessment of any penalty under section 502(c)(4) of the Act, the Department shall provide to the administrator of the plan a written notice indicating the Department's intent to assess a penalty under section 502(c)(4) of the Act, the amount of such penalty, the number of individuals on which the penalty is based, the period to which the penalty applies, and the reason(s) for the penalty.

(d) *Reconsideration or waiver of penalty to be assessed.* The Department may determine that all or part of the penalty amount in the notice of intent to assess a penalty shall not be assessed on a showing that the administrator complied with the requirements of section

101(j), (k), or (l), or section 514(e)(3) of the Act, as applicable, or on a showing by such person of mitigating circumstances regarding the degree or willfulness of the noncompliance.

(e) *Showing of reasonable cause.* Upon issuance by the Department of a notice of intent to assess a penalty, the administrator shall have thirty (30) days from the date of service of the notice, as described in paragraph (i) of this section, to file a statement of reasonable cause explaining why the penalty, as calculated, should be reduced, or not be assessed, for the reasons set forth in paragraph (d) of this section. Such statement must be made in writing and set forth all the facts alleged as reasonable cause for the reduction or non-assessment of the penalty. The statement must contain a declaration by the administrator that the statement is made under the penalties of perjury.

(f) *Failure to file a statement of reasonable cause.* Failure to file a statement of reasonable cause within the thirty (30) day period described in paragraph (e) of this section shall be deemed to constitute a waiver of the right to appear and contest the facts alleged in the notice of intent, and such failure shall be deemed an admission of the facts alleged in the notice for purposes of any proceeding involving the assessment of a civil penalty under section 502(c)(4) of the Act. Such notice shall then become a final order of the Secretary, within the meaning of § 2570.131(g) of this chapter, forty-five (45) days from the date of service of the notice.

(g) *Notice of determination on statement of reasonable cause.* (1) The Department, following a review of all of the facts in a statement of reasonable cause alleged in support of nonassessment or a complete or partial waiver of the penalty, shall notify the administrator, in writing, of its determination on the statement of reasonable cause and its determination whether to waive the penalty in whole or in part, and/or assess a penalty. If it is the determination of the Department to assess a penalty, the notice shall indicate the amount of the penalty assessment, not to exceed the amount described in

paragraph (c) of this section. This notice is a “pleading” for purposes of § 2570.131(m) of this chapter.

(2) Except as provided in paragraph (h) of this section, a notice issued pursuant to paragraph (g)(1) of this section, indicating the Department’s determination to assess a penalty, shall become a final order, within the meaning of § 2570.131(g) of this chapter, forty-five (45) days from the date of service of the notice.

(h) *Administrative hearing.* A notice issued pursuant to paragraph (g) of this section will not become a final order, within the meaning of § 2570.131(g) of this chapter, if, within thirty (30) days from the date of the service of the notice, the administrator or a representative thereof files a request for a hearing under §§ 2570.130 through 2570.141 of this chapter, and files an answer to the notice. The request for hearing and answer must be filed in accordance with § 2570.132 of this chapter and § 18.4 of this title. The answer opposing the proposed sanction shall be in writing, and supported by reference to specific circumstances or facts surrounding the notice of determination issued pursuant to paragraph (g) of this section.

(i) *Service of notices and filing of statements.* (1) Service of a notice for purposes of paragraphs (c) and (g) of this section shall be made:

(i) By delivering a copy to the administrator or representative thereof;

(ii) By leaving a copy at the principal office, place of business, or residence of the administrator or representative thereof; or

(iii) By mailing a copy to the last known address of the administrator or representative thereof.

(2) If service is accomplished by certified mail, service is complete upon mailing. If service is by regular mail, service is complete upon receipt by the addressee. When service of a notice under paragraph (c) or (g) of this section is by certified mail, five days shall be added to the time allowed by these rules for the filing of a statement or a request for hearing and answer, as applicable.

(3) For purposes of this section, a statement of reasonable cause shall be considered filed:

(i) Upon mailing, if accomplished using United States Postal Service certified mail or express mail;

(ii) Upon receipt by the delivery service, if accomplished using a “designated private delivery service” within the meaning of 26 U.S.C. 7502(f);

(iii) Upon transmittal, if transmitted in a manner specified in the notice of intent to assess a penalty as a method of transmittal to be accorded such special treatment; or

(iv) In the case of any other method of filing, upon receipt by the Department at the address provided in the notice of intent to assess a penalty.

(j) *Liability.* (1) If more than one person is responsible as administrator for the failure to furnish the items required under section 101(j), (k), or (l), or section 514(e)(3) of the Act, as applicable, all such persons shall be jointly and severally liable for such failure. For purposes of paragraph (a)(1)(iii) of this section, the term “administrator” shall include plan sponsor (within the meaning of section 3(16)(B) of the Act).

(2) Any person, or persons under paragraph (j)(1) of this section, against whom a civil penalty has been assessed under section 502(c)(4) of the Act, pursuant to a final order within the meaning of § 2570.131(g) of this chapter shall be personally liable for the payment of such penalty.

(k) *Cross-references.* (1) The procedural rules in §§ 2570.130 through 2570.141 of this chapter apply to administrative hearings under section 502(c)(4) of the Act.

(2) When applying procedural rules in §§ 2570.130 through 2570.140:

(i) Wherever the term “502(c)(7)” appears, such term shall mean “502(c)(4)”;

(ii) Reference to § 2560.502c-7(g) in § 2570.131(c) shall be construed as reference to § 2560.502c-4(g) of this chapter;

(iii) Reference to § 2560.502c-7(e) in § 2570.131(g) shall be construed as reference to § 2560.502c-4(e) of this chapter;

(iv) Reference to § 2560.502c-7(g) in § 2570.131(m) shall be construed as reference to § 2560.502c-4(g); and

(v) Reference to §§ 2560.502c-7(g) and 2560.502c-7(h) in § 2570.134 shall be construed as reference to §§ 2560.502c-4(g) and 2560.502c-4(h), respectively.

[74 FR 20, Jan. 2, 2009]